IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.36 OF 1992

Bapu Babu Patole, .. Appellant. (Orig.plff)

Vs

Sayabu Babu Patole and ors. .. Respondents.

Mr V.B.Rajure, for the appellant.
Mr V.D.Raut, for respondent nos 1 to 4.

CORAM : **D.B.BHOSALE,J.**
DATE : 21.02.2007

ORAL JUDGMENT:

1. The concurrent judgments of the courts below, by which a suit filed by the appellant-plaintiff for partition and separate possession of his 4/9th share in the suit properties, originally owned by his father, stands dismissed. The case set up by the plaintiff is that the agricultural lands, as described in paragraph nos 1A,1B, and 1C of the plaint, are the properties of Babu Patole, the father of the plaintiff, who died on 1.9.1972. He died leaving behind his two sons, namely the Plaintiff - Bapu, defendant no.1 - Sayabu and defendant no.5 - Bhagubai. Defendant no.1 being the eldest was looking after the properties as Karta of the

family.

2. The courts below,after appreciation of the evidence led by the parties, have concurrently held that there was a previous partition effected during the life time of the plaintiff’s father and the necessary entries in the record of rights were effected at his instance, being mutation entry nos. 2331 and 1498 dated 15.6.1967 and 21.1.1968 respectively. It was further held that all the members of the family were put in possession of their respective shares in 1967-68 itself and they started enjoying the properties fell to their shares. The father of the plaintiff died on 1.9.1972 and the present suit was filed in 1976. The plaintiff in the pleadings has not made any reference, direct or indirect, to the partition that was effected in 1967-68. The courts below rejected the claim of the plaintiff and have held that the earlier partition effected in 1967-68 stands proved. The observations made by the appeal court in paragraph no.12 may be noticed which make it clear that the evidence on record has been appreciated by the courts below in proper perspective and have rightly dismissed the suit filed by the plaintiff for the reliefs claimed therein. Paragraph 12 reads thus:

"12. Defendants also have shown that plaintiff has sold his 8 annas share from survey no.166/18, 166/5 and 166/7 to one Dada Tupe on 15.10.1973 which also show that the plaintiff had dealt with separately with the properties which were given to his share from the limits of Varakute-Mhaswad. It, therefore, appear correct that 8 annas share in the properties bearing survey no.166/5,166/7, 166/13,166/18,166/24,143/4,178/5, 176/6,143/2,167/5 and 166/5, 153/2 and 147/1 situated in the limits of village Varkute-Mhaswad were given to the plaintiff out of which he had sold 3 properties bearing survey no.166/18,166/5, 166/5,1667/7 to one Dada Tupe on 15.10.1973. The mutation entries effected by deceased Babu Patole making the alienation of the lands was thus effectively brought into the enjoyment and plaintiff had started enjoying the properties allotted to his share separately at least since from 1967 and till the time of this present suit instituted in the year 1976. He has not challenged those entries. It is,therefore, very difficult to find or believe that these entries were based on untrue piece of evidence when the mutation entries mention that deceased Babu Patole had given written application for effecting those entries and when these entries have not been challenged considerably for long period not only that but plaintiff has disposed off some of the properties having come to his share. Then it cannot be said that the partition or the disposal of the lands effected by deceased Babu was not ever accepted or acted upon. And in such circumstances, therefore, it cannot be said that the concerned mutation entry made in the year of 1967 were based on untrue piece of evidence. The submission of the plaintiff-appellant that the entries were effected without the knowledge of deceased Babu, or were effected without the knowledge or deceased Babu, or were effected keeping him in dark, cannot therefore be accepted. Appellant has submitted that mere mutation entries will not be sufficient to effect the partition and there is necessity of registered document. The Judgment of the lower court shows that plaintiff had cited authority reported in A.I.R.1971 Supreme Court 681 (Dayaram and others Vs. Dawalshah and others) for reference. Wherein Their Lordship have held that, the order of Revenue Officer in Mutation proceedings based on

> untrue piece of evidence has no evidentiary value in civil suit. But the learned lower court has found that these mutation entries were not based on untrue piece of evidence. It thus therefore can be seen that the mutation entries effected were not based on untrue piece of evidence. It thus therefore can be seen that the mutation entries effected were not based on untrue piece of evidence."

3. Mr Rajure, learned counsel for the appellant, raised only one contention challenging the judgments of the courts below whether there could be a partition by merely effecting mutation entries in the record of rights and whether such entries in the record of rights are sufficient to prove the partition. He did not raise any other contention. Even if it is assumed that what Mr Rajure contended is correct, in the present case, it cannot be said that the courts below have relied only upon the mutation entries nos.2331 and 1498 dated 15.6.1967 and 21.1.1968 respectively for holding that there was a partition in 1967-68. The partition was made in 1967-68 and it was recorded in the form of mutation entries at the instance of the father of the plaintiff. The mutation entries coupled with the averments in the plaint as also the evidence clearly demonstrate that the parties were put in possession as per the said partition. The plaintiff had not only taken separate possession of the properties allotted to his share in the said partition but had also dealt with

the properties separately. He admittedly sold the three properties out of the properties allotted to his share. The appellate court has so observed in the aforesaid paragraph 12 of the judgment. The partition, in my opinion, stands proved beyond pale of any doubt. The alternative submission of the plaintiff that he may be allowed to re-open the partition,was also considered by the appellate court. The appeal court in paragraph 14 has observed that the contention of the plaintiff the earlier partition was not equitable and,therefore, he may be allowed to re-open the partition, has rightly been rejected by the appeal court. In my opinion, no substantial question of law was either involved or raised in the instant appeal. Considering that there are concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal fails and dismissed as such. No order as to costs.

(D.B.BHOSALE,J.)

HIGH COURT
CIVILI APPELLATE SIDE

SECOND APPEAL NO.36 OF 1992

Date of Judgment:

21.02.2007

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a

copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?